

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

....

:: JUDGMENT ::

United India Insurance Co. Vs. Smt.Motu & ors.
Jodhpur

S.B.CIVIL MISC. APPEAL NO.382/1994

Against the award dated 21.03.1994
made by the Motor Accidents Claims
Tribunal, Barmer in Claim Case
No.38/1991.

Date of Judgment ::: 14.12.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Yashwant Mehta for the appellant.
None present for the respondents.

BY THE COURT:

The insurer of vehicle involved in accident has preferred this appeal assailing the award dated 21.03.1994 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.38/1991.

Briefly put, the facts of the case are that on 21.01.1991 at about 3.00 p.m. deceased Bhoja Ram while travelling in a truck bearing registration No.GTY 6806 sustained fatal injuries on the truck capsizing. The wife and minor child of

the deceased claimed compensation on account of accidental death of Bhoja Ram arraying non-applicant No.1 Narsingh as driver of the offending vehicle, non-applicant No.2 Nimb Singh, as the person in possession of the vehicle, non-applicant No.3 Valji Raghvji Patel (since deceased whose legal representatives were substituted as non-applicants) as registered owner of the vehicle and non-applicant No.4, the present appellant, as insurer with the submissions that the deceased was working as a carpenter earning about Rs.70/- per day. In relation to the incident in question, it was averred that a marriage party of Lal Singh son of Jeewan Singh Purohit started from Purohiton-ki-Dhani at about 3.00 p.m. in the said truck GTY 6806 and the truck owner was in need of a person to look after the truck; that the deceased Bhoja Ram was an acquaintance of Nimb Singh and, therefore, he was also taken in the truck and he was travelling alongwith members of marriage party, about 30 in number; that for rash and negligent driving of the truck, it capsized near Juna Patrasar; that Bhoja Ram was thrown out and on being crushed beneath the vehicle died on the spot. The claimants sought compensation in the sum of Rs.8,46,000/- towards pecuniary and non-pecuniary losses. In reply to the claim application, it was submitted by Nimb Singh that he was not the owner of the truck and was in possession of the vehicle

only under an agreement from its true owner Valji Raghvji. The insurer of the truck contested the claim petition, inter alia, on the ground that the deceased was travelling as a gratuitous passenger in the truck in question as a member of marriage party; that the truck was not having any permit for transporting the passengers; and that the truck driver was not holding a valid driving licence. On the pleadings of the parties, following issues were framed by the Tribunal:-

“ 1- आया दिनांक 21.1.91 को करीब पांच बजे शाम बाड़मेर से रड़वा बालेरा जाने वाली सड़क पर सरहद जूना पतरासर में विप्रार्थी सं. 1 ने ट्रक नं. जी.टी.वाई 6806 को तेज गति व लापरवाही से चलाया। जिससे ट्रक बांयी तरफ उल्टा हो गया। जिसके फलस्वरूप ट्रक में बैठा भोजाराम मृत्यु को प्राप्त हुआ।

2- आया विप्रार्थी सं. 1 विप्रार्थी सं. 2, 3 के नियोजन में ट्रक चालक के पद पर कार्यरत था। उसी नियोजनकाल में उक्त दुर्घटना घटित हुई।

3- आया प्रार्थीगण विप्रार्थीगण से क्लेम के पेरा 23 में वर्णितानुसार मुआवजा राशि पाने के अधिकारी हैं।

4- आया विप्रार्थी सं. 1 के पास बरवक्त दुर्घटना ट्रक चलाने का वैध अनुज्ञापत्र नहीं था तथा ट्रक में बिना परमिट सवारियां बिठायी जिससे बीमा पॉलिसी की शर्तों का उल्लंघन हुआ। जिससे बीमा कम्पनी मुआवजा राशि अदा करने के लिये जिम्मेदार नहीं हैं।

5- सहायता।”

The claimants examined AW-1 Motu, AW-2 Chetan Ram and AW-3 Bhur Singh whereas non-applicant-insurer examined their investigator Dr.M.C.Purohit as NAW-1 and their Assistant Administrative Officer, R.R.Mohnot as NAW-2 and also produced a copy of insurance policy Ex.A/3.

After hearing the parties, the learned Judge of the Tribunal found in issue No.1 that accident occurred for rash and negligent driving of the truck in question leading to death of Bhoja Ram on being crushed under the truck. In issue No.2 it was held that non-applicant No.1 was driving the vehicle under the control and directions of the non-applicants Nos.2 and 3. In issue No.3, in view of the age of deceased at about 30 years and taking his earnings as an unskilled labourer at Rs.30/- per day, the Tribunal assessed pecuniary loss at Rs.2,16,000/- and adding another Rs.20,000/- towards non-pecuniary loss held the claimants entitled for compensation in the sum of Rs.2,36,000/-.

In issue No.4 the Tribunal considered the question if the insurer was entitled to be exonerated? It was observed with reference to the statements of the witnesses of the appellant-insurer that the driver was holding a driving licence. So far the question of ownership was concerned, the Tribunal

found that non-applicant No.3 was the registered owner and the vehicle was with non-applicant No.2 only under an agreement and till complete payment was made neither ownership was transferred nor the transaction was required to be communicated to the insurer. It was also observed that the insurer has failed to clarify as to which term of the policy was violated. On the findings aforesaid, the claim application was partly allowed and the Tribunal made an award in the sum of Rs.2,36,000/- in favour of the claimants holding the non-applicants Nos.1 to 4 jointly and severally liable.

The non-applicant No.4, insurer has preferred this appeal contending that the deceased was travelling as a member of marriage party and, therefore, the appellant was not liable in his relation; that the truck was not having valid permit for carrying marriage party and the driver of the truck was not holding a valid driving licence and the conditions of insurance policy were breached. It has also been suggested that the award amount of Rs.2,36,000/- is excessive and the multiplier of 30 is not just and proper. The appellant has impleaded the two claimants as respondents Nos.1 and 2 respectively; driver of the vehicle, non-applicant No.1 Narsingh as respondent No.3; and the non-applicant No.2 Nimb Singh as respondent No.4. The legal representatives of non-applicant No.3 Valji Raghavji Patel have altogether been

omitted from being impleaded as parties in this appeal.

So far the question of the quantum of compensation is concerned, neither the appellant-insurer has shown to have obtained any permission under Section 170 of the Motor Vehicles Act to contest the claim on merits nor the award amount of Rs.2,36,000/- in favour of widow and minor child of 30 years old person said to be working as carpenter could be said to be excessive so as to warrant interference at the instance of the insurer.

So far the grounds of violation of policy conditions or of non-coverage of the risk of the passenger in the goods vehicle are concerned, that is essentially a matter between the insurer and the insured; and cannot be urged by the insurer in this appeal for its omission to implead the insured a party to the appeal.

As noticed above, the Tribunal has found the accident in question having occurred from the use of the truck bearing registration number GTY 6806, being driven by the non-applicant No. 1 Narsingh in the control and directions of the non-applicants Nos. 2 & 3, Nimb Singh and Valji Raghavji Patel. It remains undeniable that the non-applicant No. 3 Valji Raghavji Patel was the registered owner of the vehicle in question. Record of proceedings shows that the said non-applicant No. 3 Valji Raghavji Patel was reported to have

expired and the claimants consciously moved an application for substitution of his legal representatives on 01.04.1992; such legal representatives of the deceased non-applicant No. 3 were duly served and upon non-appearance were proceeded ex parte on 29.05.1992. The Tribunal has made the award in question fastening joint and several liability on all the non-applicants, including the present appellant insurer and so also the said non-applicant No. 3 Valji, represented by his legal representatives. The title page of the impugned award distinctly states the particulars and status of all the parties including the said legal representatives of the non-applicant No. 3.

From the insurance policy in question, it is also apparent that the said registered owner of the vehicle Valji Raghavji Patel was the person in whose name the said policy was issued. The contract of insurance was between the said non-applicant No. 3 and the present appellant. The very basis of this appeal, on the allegations of want of coverage or of violation of terms and conditions of policy, is essentially a matter between the appellant and the said non-applicant No. 3, through his legal representatives.

It could at once be seen that said legal representatives of the non-applicant No. 3 are directly the necessary parties to this appeal. Neither this appeal could be held maintainable in

their absence nor could any ground in relation to the policy conditions be heard from the insurer in the absence of the insured or the persons representing the estate of the insured. The appeal is essentially directed against the insured and in the frame of the present appeal, rather the said insured is the elementary affected party. However, the insurer for the reasons best known to it has chosen to file this appeal without even impleading the said legal representatives of the non-applicant No. 3 as parties.

It may also be pointed out from another angle that even if the contentions sought to be urged in this appeal were accepted and the insurer was held entitled to be exonerated for the deceased being a passenger in the goods vehicle, having regard to the circumstances of the case where award was made as back as on 21.03.1994 and the insurer was held liable by the Tribunal to satisfy the award and no stay order was ever passed in this appeal and the stay application was rejected on 24.04.1998, this Court would not have permitted restitution of the amount of award from the claimants and instead would have permitted the insurer to recover the same from the insured i.e., the same non-applicant No.3, represented by his legal representatives. Obviously, such order cannot be made in the absence of the said legal representatives being the parties to this appeal. The appeal

suffers from fundamental fatal flaw of non-joinder of necessary party and deserves to be dismissed on this count alone.

Faced with such fundamental lacuna in the appeal, learned counsel submitted that the appellant may be permitted to cure the defect and to implead the legal representatives of the non-applicant No.3 now. This submission on the part of the insurer cannot be countenanced at such a late stage of more than 12 years after making of the award by the Tribunal.

The appeal is, therefore, dismissed. No one having appeared for the impleaded respondents, there shall be no order as to costs.

(DINESH MAHESHWARI),J.

MK